

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 02496.401 101	<b>FOR FURTHER ACTION</b>	
See Form PCT/APEA/416		
International application No. PCT/US2004/043802	International filing date (day/month/year) 30.12.2004	Priority date (day/month/year) 31.12.2003
International Patent Classification (IPC) or national classification and IPC INV. A47J43/25 A47J43/28		
Applicant WENCO, L.L.C. ET AL.		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <ul style="list-style-type: none"> <li>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of 3 sheets, as follows:           <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</li> <li><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</li> </ul> </li> <li>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</li> </ul>		
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Box No. I Basis of the report</li> <li><input type="checkbox"/> Box No. II Priority</li> <li><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</li> <li><input type="checkbox"/> Box No. IV Lack of unity of invention</li> <li><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</li> <li><input type="checkbox"/> Box No. VI Certain documents cited</li> <li><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</li> <li><input type="checkbox"/> Box No. VIII Certain observations on the international application</li> </ul>		
Date of submission of the demand 28.07.2005	Date of completion of this report 03.04.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized officer Lehe, J Telephone No. +31 70 340-3108	
		

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International application No.

PCT/US2004/043802

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

**Box No. I Basis of the report**

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
  - This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
    - international search (under Rules 12.3 and 23.1(b))
    - publication of the international application (under Rule 12.4)
    - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

**Description, Pages**

1-14 as originally filed

**Claims, Numbers**

9-14 as originally filed  
1-8, 15-27 filed with telefax on 28.07.2005

**Drawings, Sheets**

1/6-6/6 as originally filed

a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3.  The amendments have resulted in the cancellation of:
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):
4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
  - the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/US2004/043802

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes:	Claims	1-27
	No:	Claims	
Inventive step (IS)	Yes:	Claims	15-21
	No:	Claims	1-14,22-27
Industrial applicability (IA)	Yes:	Claims	1-27
	No:	Claims	

**2. Citations and explanations (Rule 70.7):**

**see separate sheet**

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**Box No. VII Certain defects in the international application**

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The following defects in the form or contents of the international application have been noted:

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

PCT/US2004/043802

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Reference is made to the following documents:

- D1: US-A-2 225 658 (RAUCHFUSS FRANZ) 24 December 1940 (1940-12-24)
- D2: US-A-5 447 351 (KLUNDER ET AL) 5 September 1995 (1995-09-05)
- D3: DE 682 770 C (M. FRANZ MICHELER) 21 October 1939 (1939-10-21)

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

3. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.

3.1. The document D1 (fig. 1-2) is regarded as being the closest prior art to the subject-matter of claim 1, and discloses a spoon-shaped implement comprised of:

- a (...) bowl (1) having an upper surface that is concave (fig. 1-2) in two dimensions (*fig. 2 shows concavity in two dimensions, see also p. 2, l. 15-17*),
- an undersurface that is convex,
- and a leading edge (16) that is divided by the bowl's plane of symmetry (*remark: the vertical axis can be read as an axis of symmetry*);
- a handle (18) that is attached to the bowl in the bowl's plane of symmetry at a location substantially opposite the bowl's leading edge,
- wherein the bowl has a plurality of grating holes (2) through it that present a rubbing zone that is sufficiently rough that a gratable foodstuff can be reduced to small particles by rubbing it on the zone.

3.2. The subject-matter of claim 1 therefore differs from this known spoon-shaped implement in that the bowl is symmetrical. The bowl in D1 is asymmetric because it has one edge (17) provided with c-sectioned teeth, which are missing on the other opposite edge.

**INTERNATIONAL PRELIMINARY  
REPORT ON PATENTABILITY  
(SEPARATE SHEET)**

International application No.  
PCT/US2004/043802

3.3. Therefore the spoon according to claim 1 differs from that known from document D1 only in that the feature of c-sectioned teeth has been omitted. Apart from the obviously and consequently simpler design of the spoon, the only result of the omission of feature c-sectioned teeth is that the effect related to these teeth are no longer present in the spoon according to claim 1 . Such a simplification does not involve an inventive step (Article 33(3) PCT).

4. The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding independent claim 9 which therefore is also considered not inventive in the light of D1/D2 (fig. 1).

5. Dependent claims 2-8, 10-14 and 22-27 do not contain any features which meet the requirements of the PCT in respect of novelty or inventive step, see documents D1-D3 and the corresponding passages cited in the search report.

6. The combination of the features of dependent claims 15-21 is neither known from, nor rendered obvious by, the available prior art. The reasons are as follows:  
A pair of tongs with scooping edges that arch above the plane of the undersurface of a bowl is neither known nor rendered obvious by the available prior art.

**Re Item VII**  
**Certain defects in the international application**

1. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

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